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Restricting Employees' Work-Related Travel in Light of the Coronavirus Threat

There are now more than 100,000 confirmed cases of COVID-19 (“coronavirus”) in over 100 countries. As of the date of this publication, the scope, transmissibility and severity of coronavirus are not well understood. In light of the continuing, rapid spread of coronavirus, the Centers for Disease Control and Prevention (CDC) is recommending that travelers avoid all nonessential travel to certain affected destinations. This recommendation does not just impact leisure travelers; employers that require, encourage or permit employees to travel for business purposes should consider revising their work-related travel policies during the pendency of the coronavirus threat.

The risks for employers that require, encourage or permit employees to engage in business travel during this time are multifaceted. For instance, employees who are exposed to coronavirus and become ill will obviously be less productive. And if infected employees return to the workplace (before or after symptoms manifest), the virus is likely to spread to coworkers, visitors and the general public. Employers have an obligation to provide a safe workplace under OSHA, and have a general duty not to expose the public to hazards. Individuals who believe a company exposed them to coronavirus may have legal claims, including claims under workers’ compensation claims (for employees) and legal claims such as negligence. Finally, there is the possibility that the employer will receive negative publicity if employees are engaging in business travel for nonessential purposes, particularly if that travel results in exposure to coronavirus on the part of the employee or others.

Some companies have already begun temporarily restricting work-related travel. For example, Apple has restricted employees from travelling to CDC-identified “hot spots” such as China, Italy and South Korea. Other companies like Nestle, Ford, Google and Amazon have imposed similar restrictions. But for some employers, such as those in the travel or cargo industries, there may be no choice but to continue requiring work-related travel.

If your company is evaluating the risks and benefits of work-related travel at this time, we recommend taking into account the following:

Business Travel:

- Evaluate whether increased use of technology and video conferencing may substitute for in-person meetings to avoid business travel, taking into account security needs and the capacity of the company’s IT infrastructure.
- You may temporarily limit, eliminate or ban nonessential work-related travel to certain destinations or regions.
- Do not penalize employees for cancellation fees, change fees and similar financial penalties assessed related to cancellation

of business travel, but encourage early cancellation and other cost-saving measures.

- Require employees who choose to travel on business despite an employer's discouragement or direction not to do so, and employees who are requested and agree to engage in business travel, to sign an "assumption of risk" agreement.
- Offer employees engaging in work-related travel information about any travel insurance and/or medical insurance, and other travel services such as emergency evacuation, that may be available through the company.
- If employees must travel for essential work reasons and contract coronavirus, they could be covered under workers' compensation insurance.
- Consult with counsel before disciplining an employee who refuses to travel for work, as an employee's refusal may be a protected activity potentially subjecting the employer to whistleblower or retaliation claims.

Personal Travel:

- Impose appropriate restrictions following an employee's return from travel in accordance with WHO/CDC and other applicable guidelines, such as requiring remote work or paid/unpaid leave during the coronavirus incubation period (14 days).
- Promulgate a policy outlining the potential ramifications of employees engaging in personal travel (e.g., to "hot spots"), such as possible self-quarantine requirements.
- Request that employees who travel for personal reasons during this time notify you regarding their travel plans, including destinations, layovers and timing.
- Encourage employees to stay in communication with the company if any unforeseen events occur, such as quarantine in a foreign country.
- Evaluate paid time off or other leave policies or agreements to determine whether you can limit employees' personal travel, particularly if such travel would result in a required quarantine or self-quarantine period. Be cognizant of state laws that may protect the employees' right to engage in personal travel.

Other Considerations:

- Consider paid sick leave laws in your jurisdiction and whether the coronavirus pandemic is a covered event. (Note that Colorado recently imposed temporary rules on certain industries requiring up to four days of paid sick leave for employees with flu-like symptoms who are being tested for coronavirus.)
- Medical examinations—which can include taking employees' temperatures—may only be required under certain circumstances in compliance with the Americans with Disabilities Act.

From a practical standpoint, employers should be prepared to be flexible in their approach to work-related travel and personal employee travel, understanding that their policies may need regular updating as the situation develops and more information becomes available. In remaining flexible, employers should check the CDC's and World Health Organization's evolving guidelines to best protect their workforce and their bottom line.

It is best that employers approach issues related to employee travel with caution. In ensuring its responses are taken with appropriate care, the company should consult with its legal department and/or outside counsel to address these issues. Look for upcoming client alerts on other employment aspects of the coronavirus situation, including whether time off may be paid and implications of state and federal laws such as the Americans with Disabilities Act, Family and Medical Leave Act, and the Genetic Information Nondiscrimination Act.

[*Click here to read more Brownstein alerts on the legal issues coronavirus threat raises for businesses.*](#)

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